

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Participation of Distributed Energy	)	Docket No. RM18-9-000
Resource Aggregations in Markets Operated	)	
By Regional Transmission Organizations and	)	
Independent System Operators	)	

Distributed Energy Resources-Technical	)	Docket No. AD18-10-000
Considerations for the Bulk Power System	)	

**Prepared Statement of David Crews  
on behalf of  
East Kentucky Power Cooperative, Inc.**

**I. Background on EKPC**

East Kentucky Power Cooperative is a not-for-profit, member-owned cooperative providing wholesale electricity to 16 owner-member distribution cooperatives that serve 1.1 million Kentucky residents at 535,000 homes, farms, businesses and industries across 87 counties. Together, EKPC and its 16 owner-member cooperatives are known as Kentucky's Touchstone Energy Cooperatives.

The cooperative's two coal-fueled plants include John Sherman Cooper Station near Somerset with 341 MW and H.L. Spurlock Station in Maysville with 1,346 MW. Spurlock Station has four of the cleanest coal-fueled generating units in the nation and cutting-edge environmental controls.

EKPC's two gas-fired peaking plants have a summer capacity rating of 1,254 MW. These plants include J.K. Smith Station in Clark County which has nine peaking units and the Bluegrass Generating Station in Oldham County which has three peaking units.

EKPC was the first utility in Kentucky to generate its own renewable energy using methane from landfills. This capacity includes six landfill gas plants producing energy to power about 10,000 homes. In 2017, EKPC built one of Kentucky's largest solar projects. In concert with the development of the solar project, EKPC and its owner-members developed a tariff that allows members to license panels and receive bill credits based on the energy production from the solar project. Cooperative Solar Farm One has more than 32,000 solar panels and is located next to EKPC's headquarters campus in Winchester, Kentucky.

EKPC has more than 2,800 miles of transmission lines. Prior to joining PJM, EKPC operated its transmission and generation system as an independent Balancing Authority.

## **II. Regulatory Construct in Kentucky**

Kentucky is a regulated retail state. There is nothing on the horizon to indicate that Kentucky will change the current retail regulatory construct. In fact, stability in Kentucky law is one of the key factors that has allowed Kentucky's utilities to have some of the lowest rates for electric service in the nation, even after the dramatic shift we have seen away from coal and towards natural gas in recent years. EKPC and its owner-members are regulated by the Kentucky Public Service Commission (KY PSC) and their member-elected boards. Collectively, EKPC and its owner-members own distribution, generation and transmission assets and resemble a vertically integrated utility. Demand response and energy efficiency programs offered by EKPC and its owner-members are approved by the KY PSC.

In 2012, EKPC petitioned the KY PSC to grant permission for EKPC to join PJM and turn over functional control of its transmission system to PJM starting with the PJM delivery year of 2013/2014.<sup>1</sup> This action also paved the way for EKPC to become a fully integrated member of PJM and to participate in its capacity, energy and ancillary service markets. The KY PSC approved EKPC to join PJM on December 20, 2012. FERC approved EKPC's filings to join PJM on May 22, 2013.<sup>2</sup>

## **III. PSC and FERC EE Orders**

When the KY PSC approved EKPC's request to join PJM, it placed certain conditions on EKPC's operations and the participation of its owner-member load in the PJM market. The KY PSC's action was not unprecedented as it had already imposed identical conditions on both Kentucky Power Company and Duke Energy Kentucky, Inc. when those utilities integrated into PJM. Thus, EKPC and its owner-members find themselves subject to two regulators. The recent energy efficiency (EE) Orders by the KY PSC and FERC exemplify the jurisdictional overlap that EKPC and its owner-members experience.

In 2016, EKPC discovered that third parties were bidding energy efficiency from load within the EKPC system into PJM's Base Residual Auctions (BRA). EKPC believed that the KY PSC Order approving its integration into PJM precluded owner-member load from participating in the PJM

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<sup>1</sup> *In the Matter of the Application of East Kentucky Power Cooperative, Inc. to Transfer Functional Control of Certain Transmission Facilities to PJM Interconnection, LLC*, Order, Case No. 2012-00169 (Ky. P.S.C. Dec. 20, 2012).

<sup>2</sup> *East Kentucky Power Cooperative, Inc.*, Docket Nos. ER13-1177-000, *et al.* (May 22, 2013) (unpublished letter order), *order on clarification*, 144 FERC ¶ 61,067 (2013).

market except through EKPC tariffed programs. The PSC affirmed EKPC's belief in an Order entered on June 6, 2017.<sup>3</sup>

The PSC Order states:

1. Under Kentucky law and Commission precedent [meaning, KY PSC precedent], retail electric customers within EKPC's service territory are barred from participating in PJM's wholesale markets, either directly or indirectly through a third party, unless through a tariff or special contract approved by the Commission; and
2. Energy-efficiency resource providers within EKPC's service territory may participate in the PJM Capacity Market only pursuant to a Commission-approved tariff or special contract [again, meaning, a KY PSC-approved tariff or special contract], specifically to ensure that other retail electric customers within EKPC's service territory are not: (a) unfairly or unlawfully disadvantaged and discriminated against; (b) subjected to inefficient service; and (c) forced to unfairly, unjustly and unreasonably subsidize the energy efficiency resource provider's participation in the PJM wholesale market; and
3. PJM is subject to the Commission's jurisdiction to enforce its prior Orders in cases in which PJM has been granted voluntary intervention and has given acknowledgements and consents.

In response to a petition asking FERC to declare that EE resources may be bid into PJM's auctions, FERC affirmed its prior decision that, in Kentucky, load seeking to participate in the PJM markets via any demand-side management programs requires prior KY PSC approval. FERC thus recognized that the KY PSC has jurisdiction over those resources, including EE resources. PJM has since filed a tariff change at FERC to implement FERC's upholding of the KY PSC's determination regarding EE resources. Under PJM's approach, third-party EE bids originating from Kentucky would be excluded from the BRA unless they were approved by the KY PSC via tariff or special contract. PJM's filing remains pending at FERC.

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<sup>3</sup> *In the Matter of the Application of East Kentucky Power Cooperative, Inc. for a Declaratory Order Confirming the Effect of Kentucky Law and Commission Precedent on Retail Electric Customers' Participation in Wholesale Electric Markets*, Order, Case No. 2017-00129 (Ky. P.S.C. June 6, 2017).

#### **IV. Comments – The Role of State Regulation of DER**

The Kentucky example illustrates the point that, within an RTO footprint, the state regulatory rule sets are not homogenous. I believe PJM has been purposefully designed to allow participation of all regulatory constructs and a diverse group of participants. PJM has segregated the cost and credit associated with operating the generation and transmission system to a high level of granularity. This allows PJM to pay a generator for the value it provides in the market regardless of whether it is a merchant generator or the generator of a vertically integrated utility. Load pays the same cost regardless of whether it's managed by an aggregator, cooperative, municipal or investor-owned utility. This construct allows each one of these diverse entities to participate in the RTO even though the regulatory construct varies from state to state.

I believe that the RTO benefits from having a diverse set of participants. The design of PJM accommodates retail-regulated states, unregulated retail states, merchant generators, regulated generators, aggregators, load serving entities, transmission operators, etc., and FERC has promoted RTO participation of utilities in both regulated retail states and unregulated retail states. All of these participants can bring benefits to load through a robust wholesale market. Ultimately, though, the construct that allows this diversity of participants has to respect the lawful authority of state regulators.

We acknowledge that being subject to multiple regulators can be complex. EKPC puts a high priority on compliance with KY PSC and FERC business rules. But the introduction of unnecessary conflicts between state and federal regulatory jurisdiction puts utilities like EKPC and its owner-member in a regulatory position that is difficult and costly to manage. I also believe it tends to discourage utilities and states on the southern border of PJM, which are largely retail regulated, from PJM membership. EKPC joined PJM after thoughtful consideration of several RTOs and chose PJM because we found the PJM market design to be the most mature and because it accommodated both regulated and unregulated retail constructs. At EKPC, we believe the market is better served by allowing states to determine how or if retail load participates in RTO markets.

The consequences of failing to respect the role of state regulators in protecting retail markets could be dire. Indeed, as the KY PSC stated in the EKPC PJM Integration Order:

Our prior approvals of the transfer of transmission assets to PJM were based upon findings that the transfers would be for a proper purpose and that, under Kentucky's regulated electric market, no retail customer would be able to participate directly or indirectly in the PJM wholesale markets absent prior Commission [KY PSC] approval. The issues raised in this case cause us to question whether it will be necessary to initiate an investigation to

determine whether a change needs to be made in the functional control of transmission assets due to PJM actions that are inconsistent with Kentucky's regulated electric market. The decision as to the need for an investigation will be made after we have received a status report to be filed individually or jointly by EKPC, Kentucky Power, and Duke Kentucky on the actions of PJM to comply with the commitments and provisions of our prior Orders approving the transfer of functional control of transmission assets to PJM.

Based upon our experience, we believe the KY PSC recognizes the benefits that accrue to the retail customers served by EKPC and its owner-members resulting from EKPC's membership in PJM. But we also believe it's clear that the KY PSC expects the conditions precedent it placed on utilities joining PJM to be honored both by PJM and FERC. The KY PSC is closest to the retail load, and is vitally concerned that the wholesale markets work to the benefit of retail load, or at least do not impose unnecessary costs on other retail load. I think FERC and state regulators align in their goals of providing reliable, non-discriminatory and least cost service to their respective jurisdictions. Accordingly, we recommend that FERC continue to respect the authorities of state regulators like the KY PSC when they act on matters within their jurisdiction.

I also think that each state is unique in the available natural resources, transportation resources, legacy generation assets, and load mix. Given that each state is unique, I believe state regulators are in the best position to determine how to manage how distributed energy resource (DER) participates in wholesale markets. By determining whether and how retail load within their jurisdiction participates in the PJM wholesale markets, state regulators can determine which aspects of DER provide adequate cost reductions for retail customers to pursue in wholesale markets. If state regulators determine that participation of certain DER technologies in wholesale markets is not currently cost effective or beneficial, it will be a signal to PJM and FERC that the wholesale markets may need reform to encourage such participation. In that way, respecting the authorities of state regulators also helps FERC accomplish its mission of regulating the wholesale markets for the benefit of load.

## **V. Additional Comments on DER Aggregation**

I would also like to comment on two additional issues I see as significant stumbling blocks to third-party aggregation of retail level batteries participating in PJM. First, to the extent that a contract path is required to deliver energy from aggregated retail/distribution level batteries to the PJM market which operates at transmission level, there is a major gap that would need to be addressed. To accomplish that delivery, a distribution wheeling tariff would be needed. To the best of my knowledge, no utility in Kentucky offers a distribution wheeling tariff. I believe the KY

PSC narrative above makes it clear that the Kentucky General Assembly – the legislative body that sets the constraints under which the KY PSC must operate – does not favor policies that move the state closer to retail competition and I believe a distribution wheeling tariff would put Kentucky on the path to retail competition – without the necessary state legislative changes that that would require. To the extent that FERC believes it has jurisdiction over such wheeling and therefore would seek to regulate the terms of the distribution tariffs, we question whether that is an appropriate exercise of FERC’s jurisdiction. A more appropriate approach would be for FERC to respect the jurisdictional authority of state regulators, who can oversee the rates, terms and conditions of distribution wheeling to ensure that retail load is protected.

Second, FERC’s recent storage order and the pending DER aggregation proposal seemingly would allow distribution level batteries to recharge at the wholesale LMP rate. But recharging a battery at the distribution level also involves the retail sale of energy to the battery owner. Selling energy in a regulated retail state like Kentucky at the retail/distribution level is clearly within the jurisdiction of the KY PSC. It is not a wholesale transaction. The KY PSC, not FERC, should be the regulator that determines the appropriate charge for those retail sales. Again, we think it would be more appropriate for FERC to defer to state regulators to determine the approach rates, terms and conditions for such retail sales, rather than creating unnecessary jurisdictional friction by asserting authority over those sales.

## **VI. Conclusion**

Thank you for the opportunity to present these comments. I look forward to any questions you may have.

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